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December 21, 1993

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DEC 21 1993

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments of New York City Department of
Telecommunications and Energy in
RM Docket No. 8380

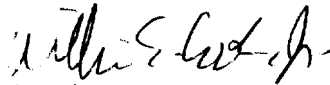
Dear Mr. Caton:

Please find enclosed, on behalf of the New York City Department of Telecommunications and Energy, an original and four copies of comments in the above-referenced proceeding.

Any questions regarding the submission should be referred to Eileen Huggard, Assistant Commissioner of the Department, at (212) 788-6549.

Thank you for your attention to this matter.

Sincerely,


William E. Cook, Jr.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 21 1993

In the Matter of)
)
Joint Petition for Rulemaking)
to Establish Rules for)
Subscriber Access to Cable)
Home Wiring for the Delivery)
of Competing and Complementary)
Video Services)

RM-8380

To: The Commission

COMMENTS OF THE NEW YORK CITY
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The New York City Department of Telecommunications and Energy ("City of New York" or "City") submits these comments in connection with the Joint Petition for Rulemaking by Media Access Project, United States Telephone Association, and Citizens for a Sound Economy Foundation in the above-captioned matter ("Joint Petition").

I. INTRODUCTION

On February 1, 1993, the Federal Communications Commission ("Commission" or "FCC") adopted its Report and Order on Cable Home Wiring¹ ("Report and Order") pursuant to Section 16(d) of the Cable Television Consumer Protection and Competition

¹ Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Cable Home Wiring, MM Docket No. 92-260, FCC 93-73, released Feb. 2, 1993, 8 FCC Rcd 1435, 71 Rad. Reg. 2d (P&F) 1214 (1993) ("Report and Order"). See 47 C.F.R. §§ 76.5(11), 76.5(mm), 76.801-02 (1993).

-2-

Act of 1992 ("1992 Cable Act").² The Commission prescribed rules prohibiting cable operators from removing operator-owned home wiring following voluntary termination of service without first providing the subscriber an opportunity to acquire it.³ While noting the comments of petitioners and others, which urged adoption of a regulatory scheme similar to that applied to telephone inside wiring,⁴ the Commission distinguished cable home wiring by reference to the cable operators' responsibilities for signal leakage,⁵ and limited its rules to those required by the 1992 Cable Act.⁶

Petitioners seek a new proceeding to determine how subscribers may have equal access to competing and complementary services over existing cable home wiring prior to termination of

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 § 16(d), 106 Stat. 1460, 47 U.S.C. § 544(i) ("1992 Cable Act").

³ 47 C.F.R. § 76.802 (1993). The system operator must offer such wiring to subscribers at its replacement cost and, if the subscriber declines, must then remove it within 30 days or make no subsequent attempt to remove it or to restrict its use. Id.

⁴ See Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, FCC 86-63, released Feb. 24, 1986, 51 Fed. Reg. 8498 (Mar. 12, 1986), on recon., 1 FCC Rcd 1190 (1986), on further recon., 3 FCC Rcd 1719 (1988) (J.A. 473, 543, 616), remanded sub nom. NARUC v. FCC, 880 F.2d 422 (D.C. Cir. 1989), Third Report and Order, 7 FCC Rcd 1334 (1992). Under these rules, consumers may remove, replace, rearrange, or maintain telephone wiring inside the home even though it might be owned by a telephone company.

⁵ See 47 C.F.R. § 76.617 (1993). Cable operators are obligated to detect and eliminate signal leakage.

⁶ Report and Order, para. 6; H.R. Rep. No. 628, 102d Cong., 2d Sess. 188 (1992) ("House Report"). Section 16(d) of the 1992 Cable Act does not address cable home wiring prior to termination of service.

-3-

the incumbent cable operator's service.⁷ Their goal is to have the Commission create "a 'level playing field' providing equal access to cable home wiring for all cable subscribers."⁸

The City supports this goal. The City, however, believes that any modification of the Commission's existing home wiring rules requires the collection and analysis of detailed information concerning, inter alia, cost recovery, convergence, competition, compensation, and developing technologies. The City therefore recommends that the Commission issue a Notice of Inquiry into new standards for allowing cable television subscriber access to company installed wiring.

The City supports an approach that will mirror the objectives of existing home wiring rules; i.e., (1) enabling consumers to avoid any disruption or property damage the removal of wiring may cause and (2) fostering competition in the multichannel video programming distribution market by permitting consumers to avoid the cost and inconvenience of having new wiring installed when subscribing to alternative or additional programming distributors.⁹ The Commission should also explore expanding its rules to cover all wiring used to deliver broadband video services.

⁷ Joint Petition at 3, 5. Petitioners cite S. Rep. No. 92, 102d Cong., 1st Sess. (1991) at 23 ("Senate Report") (telephone inside wiring rules, which permit customers to remove, replace, rearrange, and maintain wiring inside the home, should be applied to cable television).

⁸ Joint Petition at 7.

⁹ See House Report at 118; Senate Report at 23.

-4-

II. BACKGROUND

Due to the character of urban cable television construction, New York City has particular concerns regarding the ownership and use of both "home" wiring and common wiring.¹⁰ Disputes in the City have arisen where a second multichannel video programming distributor has begun to serve consumers living in multiple dwelling units. Such wiring access disputes will probably increase as competition develops in the multichannel video programming distribution market.¹¹ Absent the common carrier regulation Congress specifically rejected for cable television,¹² the City recommends regulations that are flexible enough to adapt both technical and market developments and to promote competition and diversity in communications services and equipment.

III. DISCUSSION

Petitioners note that cable television and telephone technologies are converging.¹³ They argue that in such an environment subscriber access to cable home wiring prior to termination of service would foster competition in telecommunications services and avoid the cost and inconvenience

¹⁰ See Comments of the New York City Department of Telecommunications and Energy, dated December 1, 1992, in MM Docket No. 92-260 (Cable Home Wiring).

¹¹ Id. at 5.

¹² See 47 U.S.C. § 541(c). Nonetheless, the convergence of cable television and telephone technologies suggests that divergent regulatory schemes may be unjustified.

¹³ Joint Petition at 3. See also Telephone Company/Cable Television Cross-Ownership Rules, Second Report and Order, 7 FCC Rcd. 5781 (1992); Chesapeake & Potomac Tel. Co. of Va. v. United States, No. 92-1751-A, ___ F. Supp. ___ (E.D. Va. Aug. 24, 1993), 1993 U.S. Dist. LEXIS 11822.

-5-

of redundant wiring.¹⁴

Although the City supports the dual objectives of fostering competition while avoiding consumer burdens, we believe the dynamic nature of converging technologies compels a detailed analysis of such technologies and their impact upon both the telecommunications marketplace and the public interest prior to proposing practical rules. No one can presently predict with certainty the technology or combination of technologies that will become dominant, or what the characteristics of these technologies will be. Further, as cable system operators begin to provide telecommunications services formerly reserved to telephone companies, and telephone companies begin to provide video programming services previously provided by cable television operators, the divergent regulatory schemes currently in place may become anachronistic. The City consequently recommends the issuance of the above-mentioned Notice of Inquiry to collect the information necessary for rational and effective rulemaking in this area.

In multiple dwelling units the issues of redundant wiring and the ownership of existing wiring have dual aspects. The first concerns cable wiring within the individual units; the second concerns cable wiring in common building areas such as hallways and stairwells.¹⁵ Petitioners and others have noted that cable operators may use their control over such wiring to thwart

¹⁴ Joint Petition at 4.

¹⁵ For a description of cable wiring methods in New York City, see Comments of the New York City Department of Telecommunications and Energy, dated December 1, 1992, in MM Docket No. 92-260 at 3-5 (Cable Home Wiring).

-6-

competition.¹⁶ The Commission may wish to consider whether, with regard to multiple dwelling units (MDUs), local franchising authorities should be permitted to adjust the demarcation point referenced in 47 U.S.C. § 76.5(mm) to a common area such as a stairwell. This would allow access for competing multichannel video programming distributors while avoiding the cost and inconvenience to both building owners and tenants of installing redundant wiring in hallways and individual units.

Of course, any action that affects the ownership or use of wiring installed by cable operators raises the issue of cost recovery and its impact on subscriber rates. The Commission should analyze cost recovery information collected in connection with the implementation and administration of the 1992 Cable Act's rate regulation provisions during the consideration of any proposed modifications to its home wiring rules.

Petitioners argue that cable television subscribers who have not terminated service should have equal access to existing home wiring to enable them to subscribe to competing services, such as video-on-demand, in addition to their existing cable service.¹⁷

Although the City supports increased competition and consumer choice with respect to video programming services, we note several potential issues in need of clarification and resolution prior to promulgation of any proposed rules:

¹⁶ Joint Petition at 5.

¹⁷ Joint Petition at 6.

-7-

- o What is the technical feasibility of simultaneously providing more than one multichannel video programming service over a single wire?
- o What is the likelihood of damage to or interference with the incumbent operator's system or equipment when competing and complementary services are transmitted over existing cable home wiring?
- o How will the responsibility for detection and elimination of signal leakage be allocated among several video programming distributors?
- o How will cable operators be compensated for the simultaneous use by others of existing wire?
- o Finally, will future technological developments such as digitally compressed transmission alleviate or eliminate any of the preceding concerns?

The Commission should use the Notice of Inquiry to collect the information and expert opinion necessary for it to consider any new policies or rules in this area.

Petitioners advocate the use of the Commission's telephone inside wiring rules as a paradigm for the creation of similar rules for cable home wiring.¹⁸ The City agrees that as the technologies and business operations of cable television systems and telephone companies continue to converge, a uniform regulatory approach may become appropriate or even inevitable. Increased competition in the development of telecommunications services and savings in consumer costs are worthy goals. Nevertheless, harmonization of the telephone and cable television home wiring rules will require a delicate balancing of interests that only a full inquiry can properly promote.

¹⁸ Joint Petition at 7-8.

-8-

IV. CONCLUSION

The City of New York respectfully urges the Commission to adopt its recommended approach, and issue a Notice of Inquiry into new standards for allowing cable television subscriber access to company installed wiring.

Respectfully Submitted,

NEW YORK CITY DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

By: 

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General Counsel
Eileen E. Huggard
Assistant Commissioner
Gary S. Lutzker
Telecommunications Policy
Analyst

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Dated: December 21, 1993

CERTIFICATE OF SERVICE

I, Mildred Engel, do hereby certify that a copy of the foregoing comments of the New York City Department of Telecommunications and Energy was served this 21st day of December, 1993, by First Class Mail, postage prepaid, upon the following:

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